

**COMMISSION MEETING
THURSDAY, MAY 12, 2005
DRAFT MINUTES**

Chair Niemi called the meeting to order at 1:35 p.m. at the Red Lion at the Park located in Spokane. She introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;
COMMISSIONER ALAN PARKER, Vice Chair;
COMMISSIONER CURTIS LUDWIG, Kennewick;
COMMISSIONER GEORGE ORR, Spokane
SENATOR MARGARITA PRENTICE, Seattle;
REPRESENTATIVE ALEX WOOD, Spokane**

STAFF PRESENT: **RICK DAY, Director;
NEAL NUNAMAKER, Deputy Director;
CALLY CASS, Assistant Director-Field Operations;
AMY HUNTER, Administrator-Legal Division;
DAVE TRUJILLO, Acting Administrator-Licensing;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant;**

- 1. Petition for Review:**
Top Hat Pub & Grill, Spokane:
Director Day reported that Catherine Lewis voluntarily surrendered her license and the Petition for Review was removed from the agenda.
- 2. Review of Agenda and Director's Report:**
Director Day reviewed the agenda for Thursday and Friday and noted there were no further changes to the published agenda. He identified inserts to the agenda packet which included the Gambling Commission Statistics booklet reflecting the change in trends and the direction of licenses and earnings. The Director's E-link message, documentation of the entrance conference with the State Auditor and their schedule and audit approach, and, a copy of Senate Resolution 8682 recognizing and honoring the Cowlitz Indian Tribe were also inserted.

Legislative Report:

Senate Bill 6090 – Budget:

Director Day reported on the results of Senate Bill 6090 that are applicable to the agency. He noted the budget is in much better shape than it has been in the last four legislative sessions. He acknowledged the success of the agency and its budget this year was due largely to the support of Senator Prentice. Director Day affirmed that staff from Governor Gregoire's office, Office of Financial Management (OFM) staff, and Commission staff worked through the budget notes and the numbers incorporated in the budget notes, and he affirmed the past problems in that regard have been resolved. In summary, the budget has no transfers and no staff reductions. He reported very effective communication was established between the agency's budget staff, legislative fiscal staff, and OFM; and in the end, it resulted in producing a very effective package.

Director Day addressed the COLA increase for state employees, noting the Commission has routinely provided that increase to its employees. This represents a significant addition to the budget the Commission previously approved. The raise approved by the Legislature was for non-represented employees; it was delayed by two months and will therefore take effect in September of each year. Director Day noted the Commission's entire workforce is non-represented. He reported that another issue the Commission may have to tend to in the future relates to how pension contributions will be affected. Director Day anticipated increased pension contributions regardless of the economic trends. He advised that budget planning at this point has relied on improved economic trends that generate more general sales tax revenue and increased investments income, which should help bring the pension fund back into the appropriate posture.

Director Day announced that with the legislative confirmation of Commissioners Parker and Ellis and the appointment of ex-officio Senator Delvin from Richland, the Commission was almost back to full strength. The lack of budget cuts and no transfers from the general fund provides the Commission with the opportunity to focus on the job ahead and attack a number of challenges forthcoming. Director Day noted the number of house-banked card rooms continues to exceed general projections of about 85 card rooms and staff will most likely be re-addressing associated needs. He noted that technology continues to reshape gambling activities across the state, and, when coupled with the implementation of civil service reform and the rule simplification project, Director Day cautioned the budget may require some adjustments. He thanked Senator Prentice and Representative Wood for their time and effort on behalf of the Commission this last session.

Engrossed Substitute House Bill 1031 – Problem Gambling:

Director Day reported there was a lot of gambling-related legislation around the halls of the Legislature, but in the end, the one bill that passed was House Bill 1031, the problem gambling bill. It establishes a problem and pathological treatment program in the Department of Social and Health Services, funded with a B&O tax, and other contributions that might come in past the B&O tax. Because of the funding methodology approved by the Legislature, Director Day recommended the Commission consider approving a repealer for the fee rule in place. He explained it would automatically be repealed; however, it would provide a demonstration of the Commission's good faith with the process.

Chair Niemi after briefly conferring with the commissioners present, directed staff to prepare a repealer for the problem gambling fee rule.

Lastly, **Director Day** addressed three Bills the Commission closely tracked: Senate Bill 5994-the Card Room Freeze, Senate Bill 5287 - Card Room Tax, and House Bill 1944 - state employee raffles. None of the bills made it through the final process; however, they will remain alive going in to the next Legislative session.

Commissioner Orr commented on his frustration with the method of implementing the salary increase for non-represented agencies; however, he affirmed the Commission must obey the Legislative mandate. **Senator Prentice** responded that it was certainly a difficult message. She explained that the choice would have been either a six-month wait or no raise at all, and that there was enormous pressure to simply deny state employees any kind of raise. She reiterated it was a very difficult decision and one not made easily.

Representative Wood commented that hopefully the days of shifting money out of separate agencies into the general fund for an artificial balancing act are over. He noted some structural changes were made this year, which should provide a clearer budgeting process.

Charitable Nonprofit Study Follow-up:

Director Day explained Commission staff has been bringing forward topics the Commission selected from the consultant's report and a subsequent work session. After today's presentation, one topic will remain, which relates to public outreach and a possible public survey. He reported that staff is planning on incorporating that topic in the Commission's overall communication plan/strategy and bringing the package concept forward in the near future. Director Day advised that Special Agent Patrick Griffie and Special Agent Brian Lane were present to provide information relative to the qualification and program review.

Chair Niemi called for comments from the public regarding the presentation provided in May. There were no comments.

Qualification Review:

Special Agent Patrick Griffie stated that a Qualification Review is a review of a charitable or nonprofit licensee's annual reporting documents, which is performed by agents of the Financial Investigations Unit. The qualification review verifies a nonprofit's license eligibility, and charitable or nonprofit groups must meet organizational and operational tests in order to qualify for a license. Organizational requirements include having 15 active members, being in existence for twelve months prior to certification, and being organized for an authorized charitable or social purpose. Operational requirements include making significant progress towards the organization's stated purpose, providing services efficiently, and not accumulating excessive reserves. Organizational requirements include having an authorized purpose and structure, and, having the requisite membership and elected management. If the licensee does not meet the tests, it fails to qualify as a bona fide charitable or nonprofit organization. The results of an organizational review are reflected in a report submitted to the Commission. He noted the qualification review in the agenda packet

this month related to the Rotary Club of Columbia Center. Page one of the report includes the discussion of the organizational purpose and structure, including membership and management statistics.

Operational requirements involve the agent review of the licensee's donations, management independence, and control. Agents look for reasonable compensation of the organization's employees, and that the services provided fall under the organization's stated purpose.

Charitable/Nonprofits are required to report information to the Commission annually. That information includes financial statements (either audited, reviewed, or compiled), and a narrative including the number of officers and members as well as the membership meetings conducted to ensure that they are meeting the basic qualifications as a charitable or nonprofit organization. It includes a description of the programs offered and significant accomplishments to show the organization is making significant progress. The information also includes a list of contributions to other charitable/nonprofit organizations or qualifying individuals, the name, duties performed, hours worked, and compensation paid for employees paid more than \$40,000 a year. This is the figure used to determine if there may be excessive compensation.

During the review, the agent transcribes the accounting data from the financial statements into FIU's analytical review spreadsheet, which is linked to spreadsheets that calculate significant progress compliance, and includes the prior year's information. An agent may view it for unusual changes from year to year. If any are found, the agent inquires as to what is behind the change, and evaluates that response for reasonableness. The agent checks if the financial statements are in accordance with generally accepted accounting principles and are complete. The agent also checks for proper allocation of joint costs. If the agent finds discrepancies, the agent will discuss them with the licensee and maybe begin a case report. The agent tests for compliance with charitable nonprofit rules including:

- At least 60 percent of gambling revenue is spent on functional expenses;
- No more than 35 percent of functional expenses are supporting expenses;
- The licensee does not have excessive cash reserves;
- The agent tests their agreement of the financial statements to the quarterly activity reports.

If the licensee passes these operational tests, staff recommends continued licensure. Based on whether the licensee passes both the organizational and operational tests, it either qualifies or does not qualify for continued licensure. If it does not, the agent writes a case report and the legal process is undertaken. The licensee then either comes into compliance or eventually loses their license. If the licensee qualifies, a report is presented to the Commission recommending continued licensure.

In order to provide the Commission with an overview of licensee's gambling activity, the report to the Commission also contains a summary of the licensee's gambling financial results. Summaries of the gambling activity are provided for the current and prior year. It also contains data for other bingo licensees in the applicant's geographic area and statewide for comparison purposes.

Agent Griffie in response to previously asked questions explained that “other operating expenses” are pulled from the analytical review spreadsheet, which comes from the licensee’s financial statements, and represents the sum of bingo supplies, bingo depreciation, bingo equipment rental, other bingo expenses, punchboard/pull-tab supplies, punchboard/pull-tab equipment rental, and other punchboard/pull-tab expenses. He explained the overall idea is that the detail from the financial statements is recorded on the analytical review spreadsheet. In closing, Agent Griffie affirmed the qualification review is an analysis of a charitable or nonprofit organization’s eligibility for licensure, and it is a key part of the Commission’s overall regulatory program to ensure only bona fide charitable or nonprofit organizations conduct gambling activities.

Program Review – Special Agent Brian Lane:

Special Agent Lane reported that he has served as the Nonprofit Charitable Coordinator for the last couple years, and he provided information regarding the Commission’s program review inspection process. The objective of the program review is to provide physical verification of services. The Commission’s review team goes out into the community and actually visits where the program services are taking place, and the team is actually seeing, touching, and feeling what’s going on and whether it matches the stated purpose of the organization. The program review also provides verification of the organizational structure, purpose, and the on-going ability for the licensed organization to qualify for charity gaming.

The review team visits the main administration office and looks through all of the organization’s documentation, including their written procedures, policies, board meeting minutes, and any other assertions they’ve made on their submissions. They are compared against one another to make sure they are consistent. They are also compared against their stated purpose to make sure that the written documentation is consistent with the stated purpose. The team also reviews the organization’s working procedures, structures, and business, to make sure they are all consistent with what they stated. The review team analyzes the organizational accounting and banking practices. Staff looks primarily at the organization as a whole and doesn’t focus in on gambling records at this point. Financial statements, general ledgers, tax returns, non-gambling check registers, payroll registers, and bank statements are reviewed to test and verify that the organization’s revenues, expenses, assets, and purchases are accurate, and that their accounting system is in line and makes sense.

Agent Lane explained that an informal objective is the opportunity for face-to-face dialogue with members of the organization that Commission staff typically does not speak with, such as the chief financial officer, president, board of directors, and accounting managers. These contacts provide a better idea of what the organization as a whole is about, and their level of commitment to meet the organization’s stated purpose. All charitable/ nonprofit organizations licensed to conduct gambling activities in Groups III, IV, and V, receive program reviews. These groups are licensed to conduct gambling activities with gross proceeds of over a million dollars. Every four to six years, every one of these organizations will have a program review completed; however, agents also look at any special circumstances may warrant a review either more or less often.

Agent Lane explained that after the review is completed, Commission staff conducts an exit conference with the board of directors and officers to review the findings and to discuss any possible corrective action or recommend corrective actions. The information is then put in a review file and may be used as a bench-mark for future reviews or future problems. In closing, Agent Lane advised that he has been directly involved with four or five program reviews, and he related some of his personal experiences. **Chair Niemi** called for comments.

Commissioner Parker responded that the report and the work of the staff was very commendable, very professional, and that it should give the public more confidence that this sector of the gambling industry is being very conscientiously and effectively regulated. The Commission knows what is going on in this sector. He inquired if the Commission staff would be making some recommendations back to the Commission as a result of the studies. **Commissioner Ludwig** concurred, and noted that based on the presentations, he also believed the Commission was doing a good job and emphasized that the Commission staff deserved a great deal of credit for the work they put into the Qualifications Reviews.

Chair Niemi agreed and recalled that the overall study and subsequent report was a result of more and more requests for waivers and in response to the adjusted cash flow requirements. She suggested that she would like to have staff look through the information and the consultant's report and make any recommendations regarding the cash flow requirement—should the Commission make it a higher percentage—and whether it was possible to do that without any waivers—and identify if there would be subsequent other problems. Another consideration would be whether to conduct outside audits for all charitable/nonprofit organizations or only for the larger organizations. She also questioned whether the Commission should do anything about program reviews. Chair Niemi advised she was impressed with the information provided and asked whether staff had any recommendations over and above what has been presented.

Director Day affirmed the Commission has worked through a series of the consultant's recommendations and learned that the program is very well carried out in the State of Washington. He responded that staff would be happy to take a collective look at what's been presented and come back with a short list (probably less than half a dozen issues) of action steps that the Commission might want to consider and debate, and suggested a follow-up report in August. The Commissioners concurred and Director Day proceeded with his report.

Court of Appeals Opinion – Bullseye Distributing LLC:

Director Day shared the latest opinion in the series of Court of Appeals opinions regarding the Free Spin/Bullseye Distributing device—the baseball card machine that essentially had a slot machine device in appearance. The ALJ's decision was that this was a gambling device, the Superior Court's decision and the Appellate Court affirmed the Commission's position.

Monthly Updates:

Director Day referenced news articles in the agenda packet and noted there have been some hearings held at the Federal level about miscellaneous concerns relative to IGRA and whether or not Congress is going to move toward any action this year. He reported that at this point, there haven't been any new bills introduced. **Commissioner Parker** commented

that the Commission has a good reason to feel confident that gambling is effectively regulated in Washington State, by and through the agreements between the Commission and the Tribes. He advised that he didn't know what would be motivating Senator McCain's interest in having more regulation or to expand the role of the NIGC. **Director Day** responded that the level of regulation in Washington is not necessarily consistent throughout the United States. Addressing an expanded level of NIGC involvement, he noted the NIGC was a very small organization when compared to the size of the country and the activity involved. **Director Day** stated that Washington has enjoyed a very cooperative and effective relationship and a well-regulated system since 1991, which was when the Tribes started the Compact process. He cautioned the Compact process and regulatory work that exists in Washington is not necessarily consistent nationally. In some states, the state has minimal involvement in the actual operations. He explained that part of the reason the Commission has watched the Federal legislation is because the Commission has a good system and a good relationship between the Tribe and the State; which causes a little concern about Federal legislation and how it might affect that relationship and regulatory process.

Commissioner Parker commented that the Congress could essentially increase the dues that Tribes are required to pay to NIGC. As a result, the Tribes could come back to the Commission and say the situation has changed and they no longer feel like they should be contributing their fees to the Commission for regulation that's now going to be done at the federal level by the NIGC in their expanded role. **Director Day** affirmed that it could result in some duplication in some processes. He suggested that if there's an assumption that something is not being done in Washington, but actually it has been, and it has been for quite some time, the end result would be that the Federal influence wasn't really productive to the process in Washington. **Director Day** noted one of the major issues that is also moving is the issue of electronically-aided bingo machines/electronic-aided machines—and exactly what that it is intended to mean and how far it is intended to go. NIGC is in the process of developing standards regarding specifications somewhat similar to what exists in Washington's Appendix X. That process has been very lengthy, and the Commission has already supplied some technical responses. **Assistant Attorney General Ackerman** commented that the NIGC recently decided to suspend the public comments they were taking until they actually published a proposed rule-making in the Code of Federal Regulations (CFR), then they would receive public comments as part of the CFR process.

Commissioner Parker inquired if it would make sense for Washington State or for the Commission to be in communication with Senator McCain's committee, especially if they are going to take action that would expand the requirement of the Tribes to pay additional fees to the NIGC in order to expand its role. He asked if that could be carved out on a state-by-state basis. **Mr. Ackerman** suggested all of this was in its early days in Congress, and perhaps some of the topics would sort themselves out. He noted there are a variety of issues that are coming before Senator McCain's committee and they're coming from different directions. There is input from various states that are unhappy with the aspects of either IGRA or NIGC regulations. There is also input from Tribes that are unhappy with some of the same things, and to some degree the Congress is unhappy with itself because some of the land and trust situations in California. (The George Miller Amendment.) **Mr. Ackerman** believed part of the NIGC conundrum is that the Tribes in some states are still refusing to

negotiate in good faith over Indian gambling. One of the resulting proposals was to expand NIGC's role and diminish the state's role as a way of dealing with the situation in those states. If a bill were to be proposed that was based upon that particular problem, Mr. Ackerman agreed it could be a negative for the State of Washington, because we have a more sophisticated relationship. Should that occur, he affirmed that might be a time this Commission would want to consider offering input.

Chair Niemi called for public comments on the Director's Report. **Commissioner Ludwig** commented that Assistant Attorney General Paul Golding did an outstanding job on the Bullseye case. The court ruled according to every area the Commission relied on when their application was denied. **Commissioner Ludwig** suggested and there was unanimous support that the Commission write to Attorney General McKenna to express the Commission's gratitude.

Director Day reported the Commission was also tracking Federal legislation regarding IGRA that didn't make it through the last Congress. Director Day advised he contacted Senator Cantwell's office and felt that was very productive. He noted that staff would keep the Commission informed on any new activity. It was noted that Senator Maria Cantwell sits on Senator McCain's committee, and that it would be her role to convey any Commission interests. Director Day noted the Commission has a very good rapport with NIGC in the Washington area. While there are differences in mission and perspective, he believed the Commission was coordinating very well with Regional Administrator Randy Sitton from Portland, Oregon, and has developed a very solid reputation.

3. Qualification Review:

Rotary Club, Kennewick:

Dave Trujillo, Administrator, Licensing Services Division commented that the overview of the Qualification Review Process was very timely and hopefully provided the Commission with a comfortable level of assurance that any organization before the Commission to be approved has been subjected to quite an intensive review. He reported that the Rotary Club of Columbia Center was located in Kennewick. Staff completed the Qualification Review Report for the fiscal period ending June 30, 2004. The Rotary Club of Columbia Center was formed/organized in approximately 1985, and has been licensed by the Commission since June of 1989. The organization has offered many services and programs including partnering with Tri-City Cancer Center, Hospice Care, the Reading Foundation, and Coats for Kids. They offer scholarships, participate in local music and science programs, and they provide funds for shelter at Kids' Haven. Rotary Club of Columbia Center currently holds licenses for Bingo at the H level; they also hold a punch-board/pull-tab license, raffle license, and amusement game license. Mr. Trujillo pointed out two corrections; the report was written using compiled rather than audited statements, and, secondly the organization was referred to as a nonprofit corporation rather than a nonprofit organization. He then introduced James Savelly, Gambling Manager, representing the organization.

Commissioner Ludwig commented that over the years, he has noticed a dramatic reduction in the number of bingo facilities state-wide; he inquired whether that has impacted Mr. Savelly's business—as other charities go out of the bingo business. **Mr. Savelly** affirmed it is

a game of attrition and that it was a tough market. He reported that what is now the top 25 organizations used to be the top 40 organizations.

Mr. Trujillo noted that staff recommended that Rotary Club of Columbia Center be approved as a nonprofit organization authorized to conduct gambling activities in the state of Washington.

Commissioner Ludwig made a motion seconded by **Commission Orr** to follow staff's recommendation and approve Columbia Center Rotary Club as a nonprofit corporation authorized to conduct gambling activities in the State of Washington. *Vote taken; the motion passed with four aye votes.*

4. Manufacturer Review:

KRK Sherwood, LLC, Lynnwood:

Mr. Trujillo reported that KRK Sherwood, LLC, was seeking approval to be licensed as a Class B Manufacturer in order to market a computer software program that will produce electronic bingo cards for player select games. KRK Sherwood is located in Lynnwood and is solely owned by Kevin Sherwood. Mr. Sherwood has been a licensee of the Commission in the past as a gambling manager as well as a distributor representative. Along with all license applications, this application was subjected to a pre-licensing investigation. Based upon an on-site investigation and the pre-licensing report, staff recommended that Mr. Sherwood be licensed as a Class B manufacturer.

Commissioner Parker made a motion seconded by **Commissioner Orr** to accept the staff recommendation to authorize KRK Sherwood to be licensed as a Class B manufacturer. *Vote taken; the motion passed with four aye votes.*

5. House-Banked Card Room Review:

Happy Days Casino, Lakewood:

Mr. Trujillo reported that Happy Days Casino is seeking approval to operate a house-bank card room located in Lakewood. The facility is currently authorized to conduct punch-board/pull-tab activities as well as commercial amusement games. Happy Days Casino was previously known as Happy Days Diner, Juke Box & Lounge, and has been licensed by the Commission in one form or another since 1991. The ownership representation includes two gentlemen who have ownership interest in other facilities as well. One gentleman has ownership or is affiliated with Hawks Prairie Casino and Billie's Casino. The second owner is also affiliated with Billie's Casino. Mr. Trujillo introduced owner Chuck McSwaine and General Manager Darrell Paul. Happy Days Casino was subjected to a pre-licensing investigation as well as an onsite preoperational review and evaluation. Based upon both of these reviews, staff recommended licensure of Happy Days Casino as a house-bank card room authorized to operate up to twelve tables in accordance with the wagering limits in WAC 230-40-120.

Commissioner Ludwig inquired about the location of Billie's Casino, and was advised it is located in Renton. Commissioner Ludwig asked when the owners planned to open and was informed May 27, pending Commission approval.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to follow staff's recommendation to license Happy Days Casino as a house-bank card room authorized to operate up to twelve tables in accordance with the statutory wagering limits. *Vote taken; the motion passed unanimously.*

Mr. Trujillo reported with this approval, the total number of house-banked card rooms licensed and operating in the state is 95. In addition, there are nine pending applications.

Multiple Ownership of House-Banked Public Card Rooms Update:

Mr. Trujillo noted that initially this report was a quarterly report; however, it has been changed to a periodic review and summary report on the concentration of ownership of house-banked public card rooms. The presentation displays ownership interest only of people who have three or more public house-banked public card rooms, and those with ten percent or more ownership of three or more house-banked card rooms. To add historical perspective, Mr. Trujillo reminded the Commission that the Commissioners made a choice in the past not to limit entry into the market or limit ownership. Full ownership would be 100 percent, partial ownership would range from 1–99 percent, and substantial ownership would be anything ten percent or greater. He reported that in 2002, there were four instances of multiple ownerships involving three or more house-banked public card rooms, in 2003, there were four instances, in May 2004, there were five instances of multiple ownerships, and in May of 2005, there were five instances. Even though the number of house-banked card rooms has increased, the instances vacillate between four and five.

Mr. Trujillo displayed various schematics to provide a representation of the type of relationships among the house-banked card rooms and to illustrate their complexity and current trends. The first four examples depicted a central core which led directly to the house-banked card rooms. He then demonstrated a decentralized model, which appears to be the direction the industry is moving towards—the owners are simply affiliated with one another. Mr. Trujillo explained there are positive and negative arguments to this type of example. One is that as the market increases, these are the people that will have experience running the industry, which provides a greater foundational support. The flip side would be that if one of the owners becomes unsuitable, the foundational support is pulled. Additionally, the complexity and the nature of the relationships may involve different financing, it may involve different agreements, and it may involve different management or ownership agreements.

Mr. Trujillo reported that of the currently licensed 94 house-banked card room facilities, 38, or roughly 40 percent of the card rooms have some form of out-of-state ownership. He emphasized that only a few of the card rooms are actually fully owned by people out of state.

Chair Niemi asked staff to continue this statistical tracking and to provide periodic reports to the Commission as appropriate. **Director Day** affirmed.

6. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by Commissioner Ludwig to approve the list of new licenses, changes, and Tribal certifications as listed on pages 1-26. Vote taken; the motion passed with four aye votes.

7. Defaults:

Faith Peapealalo, Card Room Employee: (Ms. Peapealalo was not present)

Amy Hunter, Administrator, Communications & Legal Division, reported that staff is requesting that Ms. Peapealalo's card room employee license be revoked based on her taking \$500 from the cage at the Rising Dragon Casino in Tacoma. She worked as the cage cashier and was terminated shortly after this incident. Her license expired in March, but the Commission had jurisdiction when the charges were issued in February. Charges were sent by regular mail to the address on file. They were not returned. When staff made their courtesy call reminding Ms. Peapealalo of the need to request a hearing if that was what she wanted, she said that her address was one digit different than the address on file. The Commission did not have a change of address on file, and by rule, service was deemed complete when it is properly stamped and addressed. By failing to respond, Ms. Peapealalo has waived her right to a hearing and staff is requesting a default order be entered revoking her card room employee license.

Commissioner Orr made a motion seconded by Commissioner Ludwig to enter into a default order revoking Ms. Peapealalo's card room license to conduct authorized gambling activities. Vote taken; the motion passed with four aye votes.

Jamie Bui, Card Room Employee: (Ms. Bui was not present)

Ms. Hunter reported that in this matter, staff is requesting that Ms. Bui's card room employee license be revoked based on her involvement in a bookmaking operation that occurred in part at her employer's facility in La Center. Over a period of about ten months, undercover agents placed over 300 bets with Ms. Bui on various sports game. These bets totaled over 60,000 dollars. Clark County has charged Ms. Bui with two counts of professional gambling in the First Degree, and that case is still ongoing. Ms. Bui has also been terminated by her employers. The charges were personally served. This was a Summary Suspension—staff felt that the violation was so serious that the license needed to be taken on the spot. Ms. Bui did not respond or submit a request for a hearing; therefore, waiving her right to a hearing. Staff is requesting a default order be entered revoking Ms. Bui's card room employee license.

Commissioner Orr made a motion seconded by Commissioner Ludwig to revoke Ms. Bui's card room employee license under the authority of RCW 94.6.075 and WAC 230.404. Vote taken; the motion passed with four aye votes.

Dustin Larson, Card Room Employee: (Mr. Larson was not present)

Ms. Hunter stated that staff is requesting that Mr. Larson's card room employee license be denied based on his failure to fully disclose his criminal history. Charges were brought

against Mr. Larson, and they were not returned. Staff has not received response, and by failing to respond Mr. Larson has waived his right to a hearing. Staff is requesting a default order to be entered denying Mr. Larson's application.

Commissioner Orr made a motion seconded by Commissioner Ludwig ordering Dustin Larson's application to conduct authorized gambling activities be denied. *Vote taken; the motion passed with four aye votes.*

8. Other Business/General Discussion/Comments from the Public:

Chair Niemi called for public comments.

Monty Harmon with Harmon Consulting complimented the agency on their Charitable Nonprofit Program Reviews. He noted the federal government approves the nonprofit organizations and their tax-exempt status. He applauded the agency for visiting the organizations and for verifying these organizations truly are nonprofit organizations. He reported that the agency does a great job in making sure the people involved in gambling in this state are truly following the laws and their stated purpose.

Senator Prentice addressed the Qualification Review and Program Review presentations which outlined the types of investigations, the length of the investigations, and the complexity of the investigations; noting it certainly endorsed the Commission's position in making sure that the Gambling Commission did not lose any more middle management positions. She expressed concern that over and over, almost every month, there seemed to be licensees who failed to submit their required reports to the Commission; and somehow or other they manage to bring their records up to date. She emphasized her belief that the Commission needed to clamp down and make sure that licensees understand that the expectation is that the industry will follow the law and be absolutely certain that if they don't, the penalties will be severe.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/Adjournment:

With no further comments, **Chair Niemi** called for an executive session at 3:45 p.m. to discuss pending investigations, tribal negotiations and litigation. She announced no action would be taken subsequent to the executive session. At 4:40 p.m., Chair Niemi recalled the public meeting and adjourned until 9:30 a.m., Friday, May 13, 2005.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, MAY 13, 2005
DRAFT MINUTES**

Chair Niemi called the meeting to order at 9:35 a.m. at the Red Lion at the Park located in Spokane.

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 COMMISSIONER GEORGE ORR, Spokane;
 SENATOR MARGARITA PRENTICE; Seattle;

STAFF PRESENT: **RICK DAY, Director;**
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 DAVE TRUJILLO, Acting Administrator-Licensing;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

9. Approval of Minutes – April 14-15, 2005:

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to accept the minutes of the regular meeting of April 14-15, 2005 as presented. *Vote taken; the motion passed with three aye votes.*

10. Temporary Licenses:
WAC 230-04-255:

Deputy Director Nunamaker reported that WAC 230-04-255 allows for the Director to issue temporary licenses. The rule was first adopted in 1974 to provide the opportunity for the Director to issue temporary licenses to qualified individuals and organizations. There are two exceptions in the current rule, for manufacturers and applicants to operate house-banked card rooms. Staff is asking that the two restrictions be removed from the rule to allow the Director to issue temporary licenses for all license applicants. If adopted, the rule will become effective July 1, 2005

Commissioner Ludwig made a motion seconded by Commissioner Orr to adopt the proposed amendment to WAC 230-04-255 with an effective date of July 1, 2005. *Vote taken; the motion passed unanimously.*

11. Non-Sufficient Funds (NSF) Check Processing Charge:

WAC 230-04-270:

Administrator Trujillo reported that WAC 230-04-270 was first adopted in 1990 to establish a processing charge for non-sufficient funds checks submitted to the Commission. The charge at that time was set at \$15 and has remained unchanged since 1990. The rule proposal would increase the processing charge from \$15 to \$30. Staff recommends the adoption of the proposed rule to be effective July 1, 2005.

Commissioner Orr made a motion seconded by Commissioner Ludwig to adopt WAC 230-04-270 as recommended. *Vote taken; the motion passed unanimously.*

12. Card Room Employees – Change in Employment:

WAC 230-04-142:

Mr. Trujillo stated that WAC 230-04-142 required notification to the Commission upon beginning, terminating, or changing employment of public card room employees. The rule was originally adopted in 1979 and required the Commission staff be notified regarding a change in a public card room employee's status—a processing fee was due at that same time. In 2000, the rule was modified to allow for the processing fee to be accrued and payable upon renewal. Since 2000, the Commission discovered this has created a hardship on the Commission for tracking and determining what the final bill would be, as well as a hardship for public card room employee/operator as they have to meet the demands of a potentially large renewal bill. A change in the language has made to Subsection 3 to clarify the transfer fee language. Staff recommends rule adoption, with the rule to become effective July 1, 2005.

Commissioner Orr made a motion seconded by Commissioner Ludwig to accept the amendment to WAC 230-04-142 as presented. *Vote taken; the motion passed unanimously.*

13. Quarterly Activity Reporting:

WAC 230-08-130, WAC 230-08-140, WAC 230-08-150, WAC 230-08-160, WAC 230-08-165, WAC 230-12-305, and WAC 230-12-310:

Ms. Hunter advised these rules deal with activity reports. The changes were made in response to the \$2.5 million transfer that occurred last year. The unit that processed these reports has been reduced from a four-person unit to a three-person unit, and next year will be reduced to a two-person unit. Staff is asking is that the reports be submitted twice a year rather than quarterly, which will save a significant amount of staff time. Additionally, the statistical booklets will only be published three times a year; two at the six-month mark with an annual report to compile all of the results.

The changes in Item 13-A affect most of the charitable and nonprofit pull-tab operators. If the charitable operator has a Class D or bigger bingo license, they would still be required to report quarterly in order for the Commission to put together the cash flow figures. Item 13-B makes the reporting change for distributors from quarterly to semi-annual. Item 13-C relates to manufacturers, Item 13-D affects card rooms, and Item 13-E applies to linked bingo prize providers.

Item 13-F requires that an organization submit information to the Commission within 60 days following the date of the transaction if they have had organizational changes. Item 13-G requires that licensees submit the final dispositions of criminal, civil, or administrative actions filed against them within thirty days. Staff recommended adoption of the entire rules package, which would be effective July 1, 2005.

Ms. Hunter affirmed that notices of the proposals were sent to cities and counties and the Association of Washington Cities, and three responses were received. The City Manager from Shoreline expressed concerns about the change. The Director of Finance with the City of Poulsbo advised they supported the proposal; however, they indicated they would like feedback from the Commission at the one and two-year marks to see if past collections have increased. The Finance Director for the City of Kenmore inquired if cities would have to change their frequency for collecting taxes, and they were advised it would not.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to take final action on items 13-A through 13-G.

Commissioner Ludwig advised that he still had a concern with adopting the rules package not knowing how the Legislature would respond to the proposal in light of their proposed legislation. **Ms. Hunter** suggested that if there was a desire by the Commission to not have the rules applied to the card rooms, an alternative would be to take final action on all the rule proposals with exception of the card room rule. **Director Day** reiterated this series of rules generated from budget decisions and budget reductions made last August in the biennium budget. He noted the majority of the reports addressed were going from four submittals a year, down to two submittals a year, except for charitable nonprofits that have the adjusted cash flow requirements. Most of the reports are involved with pull-tab distributors. The legislation that was brought forward would have had the Commission continue with card room quarterly reporting. Legislative staff had also expressed some concern about the accuracy of the reporting process and data. The Commission did not ignore the concerns expressed by the Legislators. In response, Director Day affirmed a better system was created for providing information through the recently adopted audited financial statement requirement, which has improved the overall quality and accuracy of the data available on card rooms. Director Day explained that with the smaller pull-tab operations, the rules package effectively reduces the bulk, but still preserves the information available for the Commission and the Legislature. **Chair Niemi** called for public comments.

Gary Murrey, Great American Gaming Corporation, commented that some of the information previously requested on the reports is now not requested. In his opinion, it was more than just a timing issue, it was also a formatting issue—it was information that isn't

used anymore. He supported the change. He addressed WAC 230-12-310—relating to a report being “received” by the Commission within 30 days after final disposition on notification of civil, criminal, and administrative charges. He noted that every other rule says it must be “postmarked” by that date. He suggested consistency in the procedure may be more helpful for the industry. **Ms. Hunter** affirmed the rules dealing with the quarterly activity reports refer to being “postmarked”—and the last two rules in the package refer to the documents being “received” rather than being postmarked.

Commissioner Ludwig affirmed consistency was an important factor, and he questioned whether a short amendment saying “or postmarked” would be a problem. **Ms. Hunter** responded that it would be very easy to amend as requested. **Director Day** suggested moving the rules forward so they would be completed and to provide the Commission an opportunity to make this policy decision and to support the budget reductions. He reminded the commissioners that the rule simplification process will be addressing all the rules and looking for consistencies and cleaning up the language section by section. The process included bringing the rules back for Commission consideration in the not-too-distant future. Commissioner Ludwig advised he was in favor consistency, and affirmed the issue could be handled later if it didn’t compound the work of the staff.

Mr. Murrey noted that he was unclear whether the activity report due for the second quarter would be the old format or whether it would be the new format. **Ms. Hunter** responded that it would be whatever rule was in effect—for the second quarter, licensees would still be using the second quarter report—for the third and fourth quarters licensees would be submitting a semi-annual report instead.

Chair Niemi called for further public comments—there was none, and she called for a vote on the motion. *Vote taken; the motion passed with three aye votes.*

Commissioner Orr commented that he also has noticed regular violations of the quarterly report rules; typically at each meeting there are a half a dozen people in arrears either with the Commission’s reports or taxes, or both, on multiple occurrences. He noted that over 1,500 people are providing their quarterly reports, and he believed the agency is sending a mixed message to the licensees that do their reporting right. Commissioner Orr emphasized the need to tighten up and chastise more zealously the licensees that fail to comply with the reporting requirements and fail to abide by Commission rules. **Director Day** verified whether it was Commissioner Orr’s desire for Commission staff to take a more conservative posture on how many opportunities are given before moving forward with a Statement of Charges as this rule goes into effect. Commissioner Orr affirmed. **Chair Niemi** advised this would be a policy decision and that prior to making that decision she would like to hear a discussion about the possibilities. **Commissioner Ludwig** agreed. He stated that he absolutely did not have sympathy anymore for people that don’t file the required reports within the timeframe allowed. He emphasized that was a condition of the license, and if the licensee didn’t want to complete the reports timely, they should surrender their license. **Director Day** believed the discussion was timely in that the Commission has taken two huge steps; the report has been simplified, and the Commission has also reduced the number of times the reports are

required. He commented that staff would be prepared to make a presentation at the June Commission meeting.

Mr. Ackerman clarified the Commission was talking about enforcement discretion on the part of staff as to whether or not to bring the charges forward. He affirmed that by statute, the instant a licensee is late with their filing, enforcement is appropriate. To the extent that a policy conversation is facilitated about either requiring strict compliance or something else, Mr. Ackerman cautioned that it could potentially have ramifications as the Commission takes enforcement action against someone—the Commission may be inadvertently modifying the statute if a different standard is set by policy. **Chair Niemi** affirmed and suggested that Mr. Ackerman talk with staff regarding the proposed presentation.

14. Recreational Gaming Activities:

WAC 230-02-505:

Ms. Hunter explained this rule deals with recreational gaming activities (RGA), it was filed last month, and staff is asking that the Commission also file Alternative #1. She explained that recreational gaming activities are not gambling; they can be a fundraiser commonly held as part of holiday parties. Each participant is given a certain number of chips, which don't have any value. At the end of the game, they may redeem the chips for some type of a prize. If the organization involved in these events uses professional gambling equipment, they must obtain that equipment from a licensed distributor. The organization can sponsor two recreational gaming activities per year, and the organization must be in existence for six months before they may host an event. Ms. Hunter explained this issue came about because poker is not allowed at recreational gaming activities. With the increased popularity and exposure of poker, the Commission began to get questions as to whether or not poker could be played at the RGA. The Commission received a petition from Wild Bill's Casino, one of the equipment providers, asking the Commission to look at four different changes: that poker be allowed, to allow organizations to sponsor more than two events a year, that the organizations no longer have to be in existence for six months, and, that anyone be allowed to play—not just the sponsoring organization members and guests. Last month the Commission filed a rule that would have allowed the RGAs to be unlimited. Upon further discussion, staff believes they ought to be limited to two events per year. The staff is also not agreeable to the provision that anyone be allowed to play at the RGA.

Ms. Hunter explained that the petitioner withdrew his petition with the understanding that the Commission would be bringing a rule forward. However, staff is concerned that the more widespread these events become, even though real gambling is not occurring, the public would not typically understand that distinction. Therefore, staff is asking that Alternative #1 be filed. She noted three equipment providers have asked that poker be allowed, and they are against the idea of limiting the events to only two times a year. There is a concern with limiting big companies like Boeing and Microsoft where departments “operate independently and produce their events independently.” Ms. Hunter reiterated that the only rule that needed to be changed was the definition of a recreational gaming activity. **Chair Niemi** called for comments and questions.

Geri Windecker, Wild Bill's Equipment Provider stated that in the last few days' questions have been raised among the equipment provider companies as to the clarification of what an RGA really is. She explained their events (as a licensed distributor) are called RGAs, in addition, when a company submits a petition to conduct an event—that is also called an RGA. She questioned whether the licensed distributor would only be limited to two RGAs a year and affirmed this could be for a company (such as Microsoft) using the distributor's equipment and personnel. **Ms. Hunter** responded that the rule as it exists states that a recreational gaming activity is a non-gambling activity that may be conducted no more than two times per year—by or on behalf of an organization that has been in existence for at least six months. She stated that equipment providers may provide for as many events they can a year; however, they need to make sure they are only providing equipment for each company no more than twice a year. Ms. Windecker responded that the distributor's problem with the rule related to companies (like Microsoft) that have many departments which operate their own events independently and don't necessarily know what other departmental activities involve. She suggested that the rule limits the distributor's ability to do business with Microsoft, for example, if the company as a whole is only allowed to do two events a year. Ms. Windecker suggested another argument would be a company with multiple locations, once they have their two RGAs; it appears the company could not have any more events even though they were in totally different locations around the state. She urged the Commission to reconsider lifting that limitation because it would seriously affect the distributor's ability to do business with various companies.

With no further public comments, **Commissioner Orr made a motion seconded by Commissioner Ludwig to file Alternative #1 to WAC 230-02-505 for further discussion.**
Vote taken; the motion passed unanimously.

15. Other Business/General Discussion/Comments from the Public:

Chair Niemi called for public comments. There were none and the meeting was adjourned at 10:30 a.m. **Chair Niemi** announced the next meeting would be held on June 9-10 in LaConner.

Minutes submitted by,

Shirley Corbett
Executive Assistant